The Solicitors' Journal and Weekly Reporter.

(ESTABLISHED 1857.)

, Notices to Subscribers and Contributors will be found on page v.

VOL. LXXI. Saturday, September 3, 1927. No. 36

Current Topics.

Motor Noises.

ONCE A GRIEVANCE is voiced everyone becomes vocal on the subject. The fact is that human nature, in self-defence, seeks first to ignore the cause of annoyance. Later, nervous irritation reaches, as it were, a flood point, and overflows into speech. Then we all realise how much we have been putting up with, and how many of us can stand it no longer. Some time later still, official persons are stirred into wakefulness, and "something" is done. There are, to-day, so many methods of attacking our nerve tissue by violent sound vibrations that we hardly know where to start in abating the evil. Undoubtedly motor traffic contributes the greater part of our daily burden of noise, and a correspondent of *The Times* touches the spot when he says that the nuisance is largely due to thoughtlessness. But his remedy of illuminated notices, "Please drive quietly," in all places where needless noise can cause suffering or annoyance seems hardly practicable. They would be so numerous as to be a mere commonplace, and it is to be feared would be as disregarded as the commonplace always is. The real remedy, as has been pointed out, is to scale down noises. At present worn-out vehicles with horrible rattles, ineffective silencers, selfish haste, and clumsy driving, all combine to make a great volume of noise to be a distressing background to the more acute hoots and shrieks of warning, which, if they are to be heard at all, must be strident and piercing, or bellowing and jarring. If the great volume of traffic noises can be reduced enough, gentler and more musical notes of warning would suffice. Instead of each manufacturer seeking for a means of ensuring that his make of car shall outblare all others, pride will be taken in the production of distinctive sounds at once clear and inoffensive. But this result, human nature being what it is, can only be obtained by strict regulation and unrelenting police action, a process against which motorists as a body are already in revolt. The prospect is discouraging, but with the life of Parliament growing short, it may well be that members, with an eye on their constituents, may consider an anti-noise campaign a good move. They should remember that, while many voters drive motor cars, there is a still greater number, including many of the motorists themselves, who like to sleep at night, and desire to keep out of the lunatic asylums.

Passports.

AT THIS period of the year, with several weeks of the Long Vacation still to run, those of us who till now have been kept chained to our desks in clearing off arrears of work are glad to quit the study of the White Book and Red Book and kindred volumes and contemplate a change of scene and occupation by travel either within the Realm or on the Continent. In the happy days before the war the barriers to European travel were few and easily overcome. Our guide-books informed us, for example, that "passports are now dispensed with, but they are often useful in proving the traveller's identity, procuring admission to museums on days when they are not open to the public, obtaining delivery of registered letters, etc." How different it all is now! Passports have now to be obtained by all setting out on what our ancestors called "the grand tour," and, to be entitled to them, we have to answer a long list of interrogatories, have these verified by some responsible person, and, what is more, we are required to furnish a photograph of our lineaments to which justice is never done by the photographer. As students of international law are aware, the passport is a very old institution rendered necessary by the jealousy of neighbouring States, and most of those who are middle-aged had thought their function was gone, but, after the cessation of hostilities, they were given a fresh lease of life, and, as has been indicated, have been hedged about with more stringent formalities than ever before. We suppose that passports are necessary, but we could wish that a better international atmosphere might render their use dispensable, save, perhaps, for the purposes for which they were occasionally used before the war, in obtaining registered letters and the like purely business objects.

Who are entitled to a British Passport.

BY THE Foreign Office Regulations passports are granted to natural-born British subjects, to the wives and widows of such persons, and to persons naturalised in the United Kingdom or in the British Dominions or Colonies. Occasionally, in the past, difficulties have arisen on the subject where an Englishwoman after having married a foreigner has returned to this country. About the middle of last century a curious instance of this occurred. An English lady married an Ionian during the time that the Ionian Islands were under British protection. Upon the annexation of the islands to Greece the husband became, of course, a Greek subject. Thereafter he died and the widow returned to England but took no steps to regain British nationality. One day she applied at the Foreign Office for a British passport, which was refused on the ground that she was no longer a British subject. Hearing this, the lady became exceedingly irate and demanded to see a higher official to whom she explained that she had no longer any connexion with the Ionian Islands or with Greece, but it was again pointed out to her that her status of British nationality had gone by her marriage, whereupon she said, "You really must not talk rubbish to me; I know nothing about treaties or naturalisation laws; all I know is that I am an English lady, and I demand a British passport as such." Like another celebrated importunate widow, she received what she persisted in demanding, her good looks and fascinating manners overcoming all official scruples. Probably she would not have fared so well in these days until she had taken the appropriate steps to resume British nationality.

Interrogation of Prisoner.

In Forsyth's interesting, but now largely forgotten, volume, "Hortensius," an historical essay on the office and duties of an advocate, it is said that up to the period of the revolution of 1688 our criminal trials were a disgrace to the national annals, and the author does not hesitate to call many of them "judicial murders"—a view largely borne out by the late Sir John Macdonell's recently-published volume of "Historical Trials." From the attitude of vindictiveness to the prisoner, so generally displayed in those early days, we have now swung round to one of almost extreme tenderness, which to many seems often misapplied. Take the question of the interrogation of the prisoner against which English practice rigorously sets it face, while French law freely allows it. Which is right? We naturally consider our rule preferable on the ground of fairness to the prisoner who is to be convicted, if convicted at all, by the evidence for the prosecution rather than by extorting confessions from him. So the salutary rules have been firmly established that before a police officer asks a prisoner any questions he should caution him that he is not obliged to say anything, and that anything he says will be taken down in writing and may be given in evidence; and further, that a prisoner making a voluntary statement must not be cross-examined, and no questions put to him except for the purpose of removing any ambiguity in what he has actually said. A recent Canadian case—*Rex* v. *Bellos*, 1927, S.C.R. 259—seems to show that this latter rule has been interpreted not so favourably towards the prisoner as its spirit would appear to suggest. There, on a charge of assault occasioning actual bodily harm, the police officer who arrested the accused stated that at the time of the arrest, having cautioned the accused, and the accused having stated that he had not been out since 12 o'clock that night, he called the accused's attention to the condition of his hat, whereupon the accused said that he had not worn that hat on the night of the alleged offence. The police officer also called the accused's attention to a scrape on his arm, and the accused said that it was an old mark, whereas the constable testified that it was fresh. The Court of Appeal of British Columbia rejected this evidence, but their decision was reversed by the Supreme Court of Canada, where it was said that "the Crown discharged its burden of establishing the voluntary character of the statements made by the accused, who had been given the customary warning. The mere asking of a question by the officer subsequently, or his directing the accused's attention to the subject of one of such statements, did not amount to an inducement or persuasion such as would render the statement inadmissible." This ruling, we venture to think, is of very doubtful soundness. For ourselves we much prefer the view taken by the Court of Appeal.

Decisions on the Relevancy of Averments.

The Scottish courts have always taken a stricter view of the pleadings of the parties as disclosed by the record than has been the case in recent years with the English tribunals, and they have more rigidly insisted upon the necessity of averments sufficient in law being shown by the plaintiff, or pursuer, as he is termed in the North. No doubt the practice has its advantages, for, under it an action which is obviously hopeless in point of law can be stopped *in limine*, and the useless expenditure of costs prevented. Probably in the majority of instances where the procedure is invoked it works satisfactorily enough, and more than once its adoption has received the approval of the House of Lords. On the other hand, it has its disadvantages, for different tribunals may take different views on the question what constitutes a relevant case, and it may well happen, as indeed did happen, in *Mackie* v. *Western District Committee of Dumbartonshire County Council* —see 1927, W.N. 247—that an action may run the gamut of the courts before the facts are ascertained and eventually have to be sent back for the issues raised by the pursuer's averments to be tried. In the case mentioned the pursuer was injured while in a char-a-banc travelling on a public highway owing to a tree in private ground a few feet back from the road falling and striking the vehicle. The pursuer averred that the tree was in a dangerous condition and ought to have been seen to be so by the road authority who had widened the road at the particular point and in the course of their operations had removed some of the soil which had supported the tree and had cut also some of the roots of the tree. The Lord Ordinary considered that a relevant case had been stated. The First Division took the opposite view, and dismissed the action as irrelevant, and now the House of Lords has agreed with the Lord Ordinary, and remitted the case for trial, with the consequence that the costs of the preliminary proceedings have been entirely thrown away. Such a result may no doubt occasionally happen under any system of procedure, but the possibility of its occurrence is surely no small justification for the English practice of deferring decision on points of law till the facts have been definitely ascertained.

Workmen's Compensation: Offer of Work with Condition Attached.

If a workman who has been partially incapacitated as the result of an accident arising out of and in the course of his employment, is, after he has been paid compensation for some time, offered work by his employers at enhanced wages, can he rightfully refuse to accept the offer, if it is clogged with a condition to which he takes exception, and claim to be entitled to a continuance of compensation? This was the problem which confronted the Court of Session in the recent case of *M'Donald* v. *George Outram & Co.*, 1927, S.C. 333. The applicant had been employed in the respondents' newspaper office in Glasgow and met with an accident in respect of which he was paid compensation till he was able to resume work, which he did, and he continued working till May, 1926, when, being called out by his trade union, in consequence of the general strike, he left. As a result of their experience of the strike the respondents decided that for the future they would employ non-union labour only, and to their former employees work at somewhat higher rates of wages was offered subject to this condition. The applicant declined to accept work on these terms and claimed compensation under the Workmen's Compensation Act, 1906, which, however, was refused by the arbitrator, who then stated a case for the opinion of the court. The point whether the respondents could rightfully attach such a condition to their offer was considered by all the judges, as indeed it is, one of some nicety. It was recognised that an employer is entitled to impose such conditions as are necessary to secure the efficient conduct of his business, but that he is not entitled, speaking generally, to attach conditions which interfere with a workman's activities out of business hours, and which have no bearing on the proper discharge of his duties. If, for example, the employer were in such a case to attach to his offer the condition that the workman should change his religion, would the workman be obliged to accept it under pain of losing the compensation to which his accident entitled him? Obviously, not; the condition must be reasonable. Was it then reasonable on the part of the respondents to insist that acceptance of their offer must be accompanied by a renunciation on the part of the applicant of membership of his trade union? That question, the court said, must be answered by considering whether the offer did, or did not, materially worsen the position of the applicant as compared with what it was before the general strike; that the onus of establishing whether it did or did not lay upon the respondents; and that the respondents, who had taken their stand on their offer, without more, had failed to discharge the onus resting upon them, with the consequence that the arbitrator was not entitled to refuse to make an award of compensation. Thus, as has happened time and again, the determination upon whom rests the onus of proof was sufficient to dispose of the appeal.

Law Reporting and its Humours.

As a good deal of misconception prevails—even among those who might be expected to be better informed—regarding the functions of a law reporter, it may be worth while to consider what they are. Nothing may appear easier, especially if the reporter happens to write shorthand, than to take down in court the judge's words, transcribe them, and send them to the printer. If this were all, the work would certainly present few difficulties or imply the possession by the reporter of any special, save stenographic, aptitude; but this by no means gives even an approximately complete account of the reporter's duties. What these are may be stated thus: Having listened carefully to, and made a note of, the discussion which takes place in court in a case which we shall assume he considers of importance from the legal standpoint, the reporter, when released from his court attendance, sets about the preparation of his report, which should contain, first, an accurate narration of the facts; secondly, a summary of the arguments on each side, including a reference to the authorities relied upon by counsel; thirdly the judgment which, unless it has been put in writing by the judge, may require a good deal of editing before it is printed. Just as LUTHER, when engaged in translating the New Testament, said that it was desperately hard to make the apostles talk German, so the law reporter sometimes finds the task of making certain judges talk good English by no means easy. Redundancies, sentences with a beginning but no conclusion, inaccurate references, faulty quotations, are often conspicuous in extemporary judgments, and all these the reporter is expected to remove or correct; in short, his function is to present the judgment to his readers in such a shape as presumably it would have been had the judge himself put it in writing. Even, however, when the judgment has been moulded into form, the reporter's duties are not exhausted so far as his manuscript is concerned. He has to add catchwords whose function is to indicate to the compiler of digests the subject dealt with in the report; and then comes what is oftentimes the most troublesome part of his labour—the preparation of the headnote which crystallises the legal effect of the decision. Much care has to be devoted to this part of the report, for, although it may only run into a few lines, it sums up and forms what may be described as the index to the decision, which is what the practising lawyer reads first. Nothing should be stated in the headnote save what is contained in, or is necessarily implied by, the judgment. Sometimes it can be thrown into the form of a crisp legal proposition, but very often a brief summary of the facts is set out, followed by the holding of law.

It will thus be seen that the reporter's duties are not quite so mechanical as might at first be thought. Occasionally they are arduous in view of the heavy list of cases to be reported, and they are important as contributions to the great structure of legal science. A well-qualified reporter is expected to possess, first, a good knowledge of law, so that he may be able to discriminate between the important and the unimportant, and decide what cases call for a report and what should be left severely alone. Lord Chancellor CAMPBELL, who spent some of his early years at the bar in reporting the decisions of Lord ELLENBOROUGH, would smile when anyone spoke of the uniform excellence of ELLENBOROUGH'S decisions, and, pointing to a drawer in his desk, would say that it was full of the Chief Justice's "bad law." Those were notes of cases which CAMPBELL in the exercise of his discretion declined to report. Secondly, the reporter should display a meticulous accuracy; and thirdly, the virtue of concision. Lord CRANWORTH once said, and said truly, that the reporter who condenses deserves well of the profession.

We have called this article "Law Reporting and its Humours." Some may be inclined to say that this title involves an obvious contradiction in terms. Can such work, they would ask, afford any room for the expression of humour? Certainly humour cannot be called the dominant note of law reports, but now and again a reporter imparts an amusing touch, albeit at times unconsciously, by some quaint expression in a headnote or footnote, or he may delight the jaded reader by preserving some witty or odd remark of counsel or judge. Two reporters of a bygone generation enjoyed a singular pre-eminence in this respect by reason of their methods of work. Of these, Sir GREGORY LEWIN (1796-1845), by his two small volumes of "Cases determined on the Crown Side on the Northern Circuit," published respectively in 1834 and 1839, gave the profession a goodly collection of piquant illustrations of unconscious humour. Thus, in a case of horse-stealing tried at Carlisle in 1830, the evidence showed that the prisoner had the horse in his possession in Kirkcudbright three days after it had been stolen in the County of Cumberland. The judge, having held that this was *primâ facie* evidence of a stealing by the prisoner in Cumberland, Sir GREGORY crystallized the ruling into the following startlingly broad proposition: "Possession in Scotland evidence of stealing in England," which the wags of the profession at once expanded into the still more piquant form: "Possession of a pair of breeches in Scotland evidence of stealing in England." Others of Sir GREGORY'S quaint formulæ are: "A party is bound to retreat by a back door to avoid a conflict," and "A kick is not a justifiable mode of turning a man out of your house. *Ergo*, if it cause death, it is manslaughter." MACAULAY, we are told, greatly enjoyed a perusal of Sir GREGORY'S reports.

A worthy successor to LEWIN was J. F. MACQUEEN (1808-1881), who published a series of reports of appeals to the House of Lords from the Court of Session, and at a later date was a member of the "Law Reports" staff. His earlier reports are plentifully dotted with naïve headnotes, but perhaps one of his most humorous productions occurs in a footnote. In 1858 two cases from the Court of Session came by way of appeal to the House of Lords—*Bartonshill Coal Co.* v. *Reid* and *Bartonshill Coal Co.* v. *McGuire*—each involving the question of the coal company's liability for the negligence of one of its servants. Having reported the cases, MACQUEEN appended this footnote, in which surely we find the quintessence of professional enthusiasm: "Reid and McGuire were both victims of the same accident which, though melancholy, has settled the law." His breezy methods did not disappear when he joined the "Law Reports," for we find the headnote of one of his reports couched in these terms: "Per Lord Chelmsford: It is really lamentable to think of the enormous expense incurred in this case. Per Lord Westbury: Such things occur in appeals from Scotland day by day"! After reading erudite propositions such as those penned by Sir GREGORY LEWIN and Mr. MACQUEEN, who shall say that law reports are invariably dull?

Witness called by the Judge.

IN the case of *R.* v. *Harris*, 1927, W.N. 251; 43 T.L.R. 774, a question was raised, which emerges from time to time, the right of a judge himself to call a witness in a criminal trial.

The right itself was emphatically re-affirmed: the two cases of *R.* v. *Chapman*, 1838, 8 C. & P. 558, and *R.* v. *Holden*, 1838, 8 C. & P. 606, being cited in the judgment of the Court of Criminal Appeal as authorities. It is difficult to see that the earlier of the two cases has anything to do with the point, the judge's part being, according to the report, merely telling counsel for the prosecution he was right in calling a witness who was present at a murder although he was likely to be hostile.

In *R.* v. *Holden*, the judge insisted on a witness who was present, "brought by the other side," being called by the prosecution, as being one present on the occasion of a death charged as murder, and himself called and examined a doctor who had been present at the post-mortem examination.

The case of *R.* v. *Peel* (Central Criminal Court, 15th March, 1922) was not mentioned. There DARLING, J., said, the point

having arisen: "In a criminal case the judge has an inherent right to have a witness called." In fact he refrained from calling the witness in question, on the ground that nobody would believe him if he were called.

No one seems to have pointed out that the calling of witnesses by the court is recognised by statute: see the Costs in Criminal Cases Act, 1908, s. 1 (2), where the phrase is used "Any person properly attending to give evidence for the prosecution or defence, or *called to give evidence at the instance of the court.*"

It is truly said in the present judgment that no definite rule has been laid down limiting the point in the proceedings at which the judge might exercise his right of calling witnesses. In *R.* v. *Haynes*, 1859, 1 F. & F. 666, BRAMWELL, B., refrained from calling fresh evidence after the close of the whole case, considering, after consultation with CROMPTON, J., that "it would be inexpedient" to do so. The witness in question was a prison surgeon whose evidence would have gone to the state of mind of a prisoner standing charged with murder.

In *R.* v. *William Sullivan*, 1921, an appeal against a conviction for murder, heard in the Court of Criminal Appeal, it appeared that the trial judge had recalled witnesses after the prisoner had given evidence, and called further witnesses after counsel's speeches. The court decided that the objection to this judicial action failed; "there had been no irregularity which had caused injustice to the prisoner."

In the present case, after the case for the defence was closed, the trial judge (the Recorder of Liverpool) asked one of the prisoners to give evidence, and himself examined him. This course was condemned by the Court of Criminal Appeal, which has now laid down that a judge is limited in the same way as the prosecution, and can call a witness, after the case is closed, only if some matter arises "*ex improviso*, which no human ingenuity can foresee," a rule adopted from *R.* v. *Frost*, 1839, 4 St. & Tr. (N.S.), at p. 386.

The court said "It was obvious that injustice might be done to an accused person unless some limitation were put on the right" of the judge to call witnesses, but expressly added that they decided the case "without laying down any general rule that in no case could a judge call a witness after the close of the case for the defence."

There is a very interesting Australian case, *Titheradge* v. *The King*, tried by the High Court of Australia in December, 1917, and reported 24 Commonwealth L.R. 107, where the question of the judge calling witnesses was considered in elaborate judgments. It was decided that the judge cannot of his own motion call and examine a witness at all without the consent of the accused. The English cases were considered, but the decision largely turned on the interpretation of a statutory provision peculiar to Australia.

A Conveyancer's Diary.

Devolution of Trusts and Powers on Personal Representatives of last S.L.A. Trustee.

The point has frequently been argued that the personal representatives of a last surviving S.L.A. trustee of a settlement have not, by the new Acts, been made, or given the powers of, S.L.A. trustees of such settlement, until the appointment of new trustees. Exception is made from the argument of the case of the representatives for the time being of the last surviving or continuing S.L.A. trustee who has been appointed by the court under S.L.A., 1925, s. 34 (1); for *ib.*, sub-s. (2), is clearly applicable to that case. It is equally manifest that the receipt or direction in writing of or by the personal representatives of such surviving trustee is effectual: S.L.A., 1925, s. 95.

The view consistently advanced in our columns is that such representatives can properly exercise the powers of S.L.A. trustees, because the general application of the provisions contained in the T.A., 1925, s. 18, is not restricted by s. 64 of the same Act, which enacts, *inter alia*, that all the powers and provisions contained in the T.A. with reference to the appointment of new, and the discharge and retirement of, trustees apply to and include trustees for the purposes of the S.L.A., 1925.

Attention may be drawn to the fact that our view finds confirmation in the new Vol. II of "Wolstenholme and Cherry." On p. 370 of that volume the following note appears to T.A., 1925, s. 18:—

> "It has been suggested that this section is not applicable to the personal representatives of a S.L.A. trustee not appointed by the court (S.L.A., 1925, s. 34 (2)) because s. 64, *infra*, which is not required for this purpose, does not apply. The words 'any power or trust' are clearly wide enough to include the duties of S.L.A. trustees; moreover under S.L.A., 1925, s. 95, *supra*, the personal representative of a last surviving or continuing trustee have power to give receipts for capital money, which they could not do unless they could act as S.L.A. trustees; hence there appears to be no room for doubt."

Damages in lieu of Mandatory Injunction: *Achilli* v. *Tovell*, 1927, W.N. 252.

A restrictive covenant case of considerable interest and importance is reported in the "Weekly Notes" for 27th August, namely, *Achilli* v. *Tovell*. The material facts were briefly as follows: The plaintiff's predecessors in title had conveyed to the defendant property adjoining a house belonging to them. In this conveyance the defendant covenanted for himself and his assigns with the vendors and their assigns that no building should be erected on the premises thereby conveyed which would materially interfere with the access of light and air to the windows of the vendors' house.

A company of which the defendant was managing director, but to which no formal conveyance had been executed, had, whilst in possession as owners of the property conveyed to the defendant, and relying on an implied permission given by the plaintiff's rent collector, who had no actual authority to give the same, and who in fact gave it under a misapprehension, raised the walls of certain stables on the property, thereby seriously cutting off the light and air from the windows of the house now the plaintiff's. The plaintiff was unwilling to sell her property or accept damages for what was undoubtedly a serious breach of covenant. The question which Mr. Justice Astbury was called upon to decide was whether in the circumstances the plaintiff could insist on a mandatory injunction, or whether the court could award damages in lieu thereof.

It is to be observed that (1) there was a clear and serious breach of the restrictive covenant; (2) that the property injured was of small value, and that the owner was unwilling to part with it; (3) that the damages were easily ascertainable; (4) that the remedy sought was an order to pull down what was a large and substantial wall; and (5) that the company were not the covenantors but merely assignees with notice and were only bound in equity.

It was argued for the defendants that in the enforcement of a mere equitable remedy—the defendant in this case being only bound by the covenant in equity—the court had a fuller discretion in the award of damages in lieu of an injunction than it had in the case of a restrictive covenant legally binding upon the covenantor. Astbury, J., held that the covenant, having been entered into to protect the property injured, and the breach having caused substantial damages, the court had no discretion to award damages, and that the plaintiff was accordingly entitled to a mandatory injunction.

The case differs from *Sharp* v. *Harrison*, 1922, 1 Ch. 502 (a case relied upon by the defendant), in important respects. In particular, in that case no damage or injury of any sort or kind had been or could be inflicted upon the plaintiff, and a third party—the defendant's lessee—who was not a party to the action might have been seriously prejudiced by the grant of the injunction sought. Having regard to these facts and

to certain undertakings given by the defendant, the court being satisfied that justice between the parties was in that way ensured, exercised its discretion to award damages in lieu of a mandatory injunction.

It seems clear then that when substantial damages follow from the breach of a restrictive covenant the person injured has a right to a mandatory order, whether the breach is committed by the covenantor or by some person only bound in equity.

Landlord and Tenant Notebook.

Effect of Consent Orders in Apportionment Cases under the Rent Acts.

A somewhat unusual point was recently raised in the county court in opposition to an application for apportionment made by a tenant of premises alleged to be within the Rent Acts. *Peters* v. *Thomas*, L.J. C. C. R., 28th May, 1927.

The material facts in this case were shortly as follows:—

In April, 1925, an application for apportionment had been made to the Registrar by the same tenant. The hearing of the application was adjourned, and during the adjournment, the parties decided to settle their differences between themselves.

An application was accordingly subsequently made to the Registrar that the apportionment summons should be struck out by consent, and this was accordingly done. At the same time the parties asked the Registrar to witness an agreement they had arrived at, as to the rent to be paid for the rooms in question. An entry was made in the rent book to the following effect:—

"Three rooms on the 2nd floor. *Agreed rent* 13*s*. *per week*,"

and this entry was initialled and dated by the Registrar in the presence of the parties.

Subsequently, the tenant made an application to the judge for apportionment, whereupon the point was taken that the matter was *res judicata*, and that an apportionment had already been made. The learned county court judge, however, held notwithstanding that the tenant was entitled to reopen the whole matter and to ask the court to make an apportionment.

In ordinary practice, on a summons for apportionment, the only matter that is generally fought out is whether or not an apportionment can legally be made, and where it is admitted or held that the tenant is entitled to an apportionment, the parties not infrequently agree among themselves what the apportioned rent ought to be, and the Registrar usually accepts this figure and enters it in his order. In the event of disagreement on the amount of the apportioned rent the Registrar either determines the question himself on such evidence as is available, or else refers the matter to a surveyor or a valuer agreed upon by the parties. Even where an order is made by the Registrar, the parties have the right to appeal to the judge, but the Registrar's order is nevertheless regarded as final unless appealed against, and if an appeal is not lodged within the prescribed time, no application will be allowed to be made without leave of the judge (see r. 7 (*c*) of the Increase of Rent and Mortgage Interest Rules, 1920).

Apparently what took place in *Peters* v. *Thomas* was not an appeal against the Registrar's order, but an application *de novo*, which was made to the judge instead of to the Registrar (see r. 7 (*a*) of the Increase of Rent and Mortgage Interest Rules, 1920).

At first sight it may appear, therefore, that where on an apportionment summons the Registrar does not himself, or through a valuer or surveyor appointed by him, fix the amount of the apportioned rent, but accepts a figure agreed to between the parties, the matter is in no case *res judicata* and may be reopened subsequently. If this is indeed the effect of *Peters* v. *Thomas*, then in every summons for apportionment the Registrar would have to be asked to determine himself the amount to be apportioned, and not merely to accept the figure agreed to by the parties, if it was desired that the decision of the Registrar should be final. It is submitted, however, that *Peters* v. *Thomas* does not affect such cases. It will be observed in *Peters* v. *Thomas* that the parties asked that the *summons for apportionment should be struck out*, and that this was accordingly done, and the Registrar, indeed, by initialling the entry in the rent book, was not making any order on the summons of apportionment or at all, but was merely witnessing, but not as Registrar, an agreement arrived at between the parties.

Had the case, however, been an ordinary one, no doubt the tenant would not have been entitled subsequently to ask for an apportionment, since he had entered into a valid and binding contract for good consideration (i.e., the settlement of the proceedings) to pay an agreed rent, and by asking the court to make an opportionment he would be departing from the terms of the agreement in question.

As the matter, however, was one which concerned the amount of rent payable for a dwelling-house within the Rent Acts, the tenant had in his favour s. 1 of the Rent Act, 1920, which provides that, where rent has been increased since the 25th day of March, 1920, or thereafter, so that the increased rent exceeds by more than the amount permitted by the Act the standard rent, the amount of such excess shall, *notwithstanding any agreement to the contrary*, be irrecoverable from the tenant.

If, therefore, the rent agreed to by the parties in *Peters* v. *Thomas* was in excess of the amount permitted by the Act, the landlord would not have been entitled to the amount of the excess, notwithstanding the agreement in question.

It may be argued from the above that the position must necessarily be the same where the Registrar makes an order for apportionment, but merely accepts the figures given to him by the parties. No doubt in such a case the amount agreed upon may be in excess of the amount which would have been arrived at on a proper apportionment being made, but the order of the Registrar inasmuch as it is an order of the court must notwithstanding be regarded as final.

Consent Orders for Possession.

It may be interesting while we are dealing with this topic to refer to the case of *Rossiter* v. *Langley*, 41 T.L.R. 304, where the effect of consent orders for possession was considered. In that case an action for possession of premises within the Rent Acts had been brought by the landlord, and a consent order has been made whereby the tenant agreed to give up possession by a certain date. Subsequently, the tenant made an application to the court that the date of delivery of possession of the premises should be postponed. It was contended that the court had no jurisdiction to entertain the application inasmuch as a consent order had been made which had to be regarded as final. The Divisional Court, nevertheless, held that the County Court had, notwithstanding, jurisdiction to entertain the application and to make any such order as it deemed fit, by virtue of the powers conferred on it by s. 4 "5" (2) of the Rent Act of 1923. That provision, it will be noted, empowers the County Court, at the time of an application for possession and even subsequently to the making of an order for possession, so long as such order has not been executed, to entertain applications for, *inter alia*, suspending execution, postponing the date of possession, and so forth. Had it not been for this provision it is clear that the consent order for possession in *Rossiter* v. *Langley* would have been final.

There is no similar provision with regard to apportionment, and it is submitted that where an *order* for apportionment has been made, even by consent, the order will be final and binding.

The importance of *Peters* v. *Thomas* may, therefore, be regarded as consisting in the attention it draws to the fact that no mere agreement between parties out of court can settle the question of apportionment, and if the question is to be settled the only way of doing so is to apply to court, which may embody in an order the agreement of the parties, and such an order, so long as it is in effect an order of the court and not merely a witnessing of an agreement as in *Peters* v. *Thomas*, will be binding on the parties.

Correspondence.

Refresher Fees in Police Courts.

11th February, 1927.

Sir,—I have had a case which it has been necessary to brief a King's Counsel and a junior before a Metropolitan Police Court. The amount of the fee paid to the leading counsel was a very fair and reasonable one.

On the first hearing the case occupied the court two hours and was adjourned for a fortnight. The case has since been heard by the magistrate and occupied one and a half hours. On the second hearing the clerk to the leading counsel demanded a refresher fee and claimed it in accordance with an alleged practice of the Bar.

One knows the rule which is laid down in the White Book with reference to the counsel being entitled to a refresher after the case has been heard in the High Court for more than five hours entitling counsel to a refresher fee, but I am not aware of any rule relating to the right of barristers to a refresher fee for every appearance made by him in a police court irrespective of the time engaged on the first hearing and the fee originally marked on his brief.

I shall be glad to know if you will refer me to any authority or rule dealing with the subject in question. If there is no authority or rule am I entitled to assume that a refresher fee only becomes payable after a hearing of five hours.

Your obedient Servant,
F. W. Perkins.

The Secretary,
Bar Council,
5, Stone-buildings,
Lincoln's Inn, W.C.2.

5, Stone-buildings,
Lincoln's Inn, W.C.2.
28th July, 1927.

Dear Sir,—Following on my communication of 17th May, 1927, and previous correspondence, the subject has subsequently received detailed examination by the General Council of the Bar, and I beg to enclose the formulation of rules for refreshers in criminal cases as adopted by the Council yesterday. As the rule is not retrospective it is a matter for your consideration whether you will apply it to the case mentioned in your letter of 11th February or not.

Yours faithfully,
E. A. Godson,
Secretary.

F. W. Perkins, Esq.
Solicitor.

REFRESHER FEES IN CRIMINAL CASES.

1. Counsel and solicitors may make such arrangements as they think fit with regard to refresher fees in criminal cases either in police courts or at trial.

2. In the absence of arrangement refresher fees are payable in police courts for the second and each subsequent hearing, and at trial at sessions or assizes, or the Central Criminal Court in accordance with the rules as to refreshers prevailing in the High Court, except in circuit cases finishing on their first day.

The New French Law on Nationality.

Sir,—The new French Law on Nationality (Loi sur la Nationalité) of 10th August, 1927, may be of some interest to the profession in England, as, *inter alia*, an effort is made to cope with the problem of the nationality of the married woman and of her children.

In accordance with Article (8) of the above-mentioned law, a French woman married to a foreigner retains her French nationality, unless, prior to the celebration of marriage, she gives notice of her intention to acquire her future husband's nationality, *providing* the first matrimonial domicil is fixed in France. If, however, the first matrimonial domicil is fixed outside France, she automatically loses her French nationality. Provision is made, however, for recovery of French nationality on resumption of residence in France.

In accordance with Article (1) of the above-mentioned law, every legitimate child born in France of a French mother is French. Consequently many more cases may arise in the future of dual nationality. With a view to alleviating this admittedly unsatisfactory result, a rather curious provision is made in Article (9). This is to the effect that a Frenchman, even a minor, who by the effect of law and without any expression of desire on his part possesses foreign nationality, is authorised by the French Government to retain such foreign nationality at his request, upon which he loses his French nationality.

Barclay & Co.

37, Rue des Mathurins,
Paris,
29th August.

The Gardener's Tax.

Sir,—I have just read your note headed "The Gardener's Tax" on p. 683 of your present issue, in which it is stated that "If a person employs a jobbing gardener only once or twice a week, he is apparently liable to a tax of 15s. a year; if he does not take out a licence for him, he can be prosecuted, an official of the Local Taxation Department of the L.C.C. recently stated."

I turn to p. 556 of my "Diary"—Sweet & Maxwell, 1927—and I read: "Exemptions.—Licence not required. For a servant occasionally employed, or a person engaged for portion of a day only and not resident with employer. 39 & 40 Vict. c. 16, s. 5."

The words of the Act itself are as follows:—

> "The term 'male servant' . . . shall not include a person who has been *bona fide* engaged to serve his employers for a portion only of each day and does not reside in his employer's house."

This would appear to be a necessary qualification to the argument of the gentleman named in your note. Those who employ gardeners for portions of days seem to be exempt; and this, apparently, even though the total number of portions should exceed in time the equivalent of one whole day's labour.

H. W. Milnes.

7, High Street,
Barnet, Herts,
29th August.

[We thank our correspondent for drawing our readers' attention to the position of a gardener who is *not* employed for the *whole* of one single day.—Ed. *Sol. J.*].

POINTS IN PRACTICE.

Questions from Registered Annual Subscribers are invited and will be answered by some of the most eminent authorities of the day. All questions should be addressed to—The Assistant Editor, "The Solicitors' Journal," 34-97, Fetter Lane, E.C.4, be typewritten on one side of paper only, and be in triplicate. Each copy to contain the name and address of the subscriber. To meet the convenience of Subscribers, in matters requiring urgent attention, answers will be forwarded by post if a stamped addressed envelope is enclosed.

REGISTERED LAND—PURCHASE—POSSIBLE BANKRUPTCY OF REGISTERED PROPRIETOR—SEARCH.

922. *Q.* It is laid down in "Prideaux," and also the Encyclopædia Forms and Precedents, that in the case of registered land (except with a possessory title), no searches, except the register of the title, are required. It was recently contended to us by solicitors acting for mortgagees that searches in bankruptcy were also needed, their reasoning being that the payment of the money and the handing over of the land certificate and transfer did not constitute completion; completion actually took place when the transfer was accepted by the registry, and that in the intervening period between their accepting the transfer and its being lodged and accepted at the registry, notice of a petition or receiving order might be entered on the file at the registry. We should much appreciate your views on the above.

A. If a purchaser acts in good faith, and without knowledge of the vendor's bankruptcy, the relevant date from which protection runs, as prescribed by the L.R.A., 1925 s. 61 (6), is that of the "disposition." If then such a purchaser is once registered as proprietor, s. 61 (6), ensures him safety, notwithstanding that the vendor became bankrupt while still registered as proprietor between the date of the disposition and its completion by registration. In this answer the date of the disposition is assumed to be, and the opinion is here given that it is, the date stated on the transfer form (see form 19; and others in the L.R. Rules, 1925, Sched. and r. 98), which presumably is the date of execution and delivery: see *Oshey* v. *Hicks*, 1610, Cro. Jac. 263, and *Stone* v. *Bale*, 1693, 3 Lev. 348; but it is to be noted that the learned editors of "Brickdale" are doubtful about it: see 3rd ed., p. 238 note (*b*), so, on the principle of "safety first" the search in bankruptcy may be the more prudent course unless and until there is authority that it is unnecessary.

SETTLED LAND—CESSER OF LIFE INTEREST IN TENANT'S LIFETIME—NO VESTING DEED—S.L.A., 1925, ss. 7 (5), 13, 30 (1) (v)—TITLE.

923. *Q.* Referring to *Q.* 907, it seems to us that the position is different from the position in *Re Alefounder*, inasmuch as in our case the legal estate in the property remains vested in the tenant for life, with E and F as the parties entitled to call for an assignment of the property under the S.L.A., 1925, s. 7 (5), whereas in *Re Alefounder* the tenant for life, on barring his entail, held the absolute legal fee simple in trust for himself as equitable tenant in tail, with remainders over. It does not seem to us it can be properly said that the land in our case is no longer settled land, and if that view is correct, we do not see how the matter can be dealt with, except under the machinery of the S.L.A., 1925. No doubt, for all practical purposes, the trusts of the settlement have come to an end, but unfortunately there still remains something to be done in transferring the legal estate in settled land from the tenant for life to E and F, who, under the trusts of the settlement, have now become entitled to the property absolutely. We feel some difficulty in construing s. 30 (1) (v) of the S.L.A., 1925. It would, however, seem that B, E and F are persons who, by virtue of their beneficial interests, are together able to dispose of the settled land in equity for the whole estate, the subject of the settlement, and if this is so, it would appear that they could appoint trustees for the purposes of the settlement, who could then execute the necessary vesting deed.

Answers to the further following questions are desired:—

(1) Is the land still settled land within the S.L.A., 1925, or does the fact that the trusts of the settlement have come to an end, except so far as it is necessary to assign the settled land to E and F, take the case outside the provisions of the Act?

(2) Can B, E and F make a valid appointment of trustees of the settlement under s. 30 (1) (v) of the S.L.A., 1925? This course would no doubt be preferred to the course of applying to the court under s. 6 of the L.P. (Am.) A., 1926, for an order.

A. The answer to *Q.* 907 has been carefully considered, and must be confirmed. The present position is that B holds the legal estate upon trust for E and F absolutely, which does not constitute a "settlement" within s. 1 of the S.L.A., 1925, and therefore the land is not settled land. No doubt the words "settled land" are occasionally used somewhat loosely in the Act, e.g., in s. 7 (5), where "settled land" obviously means (as here) "land which up to some recent date has been settled." But in s. 5 (1) the vesting deed is referred to as "for giving effect to a settlement," and no "settlement" is in existence. On this reasoning, a vesting deed to give effect to a non-existent settlement would be a nullity. If, however, the questioners also can put their own point before the court and seek its guidance, they may do a service to the profession in clearing up a difficulty.

DEVISE TO TWO—EXECUTORS' DUTY—WILL OF UNDIVIDED SHARES.

924. *Q.* With reference to *Q.* 811 in your "Points in Practice" columns, we may mention that we have an exactly similar case in hand. Our idea of the method to be adopted was:—

(1) An assent by the executors to the vesting of the property in themselves as joint tenants upon the statutory trusts.

(2) Their retirement from the trusteeship, and the appointment of the devisees as new trustees upon the statutory trusts.

We observe in your answer that you suggest that s. 3 (1) (*b*), proviso, of the L.P.A. overrides ss. 34 and 35. Section 3 (1) (*b*) commences: "Where the legal estate affected *is vested* in trustees for sale." Section 34 (3) states that the devise "shall operate as a devise," and to carry out that devise does it not seem necessary that there should be an assent, and when the trustees have once been established, in a case where the persons equitably entitled to the proceeds can only become trustees, does it not seem more logical that the transference should be by means of the retirement of the established trustees and the appointment of new trustees? Section 34 (3) appears to us to be an enactment to meet certain specific circumstances. Section 3 sets out the general principle. We shall be much obliged if you can see your way to consider these points with a view to further comment on the query in your columns.

A. In the case put in *Q.* 811 there were no trustees of the will, so the devise operated as one to the personal representatives upon the statutory trusts by virtue of the L.P.A., 1925, s. 34 (3). In the present problem, the questioners appear to assume that the personal representatives cannot sell under the statutory trust until they have assented to the devise to themselves as trustees for sale. In effect, this is an assumption that personal representatives, as such, cannot be trustees for sale, though they may have a power of sale. The opinion is here given that this assumption is at least open to considerable doubt. The A.E.A., 1925, s. 33 (1), gives personal representatives, as such, a trust for sale, and the suggestion that before they could exercise it they would be obliged to make assent to

themselves as trustees would probably surprise the profession. And in this respect the position under the L.P.A., 1925, s. 34 (3), does not appear to differ from that under the A.E.A., 1925, s. 33 (1) (*a*). On the above reasoning, therefore, since the statutory trust for sale is vested in the executors as such, and the executors cannot appoint new trustees to carry out their duties, the proposed course does not seem altogether safe. Possibly, of course, the words "operate as a devise" in s. 34 (3) may differentiate the two cases, but if so, the devise is to executors *quâ* executors and not *quâ* trustees. The safest title, therefore, still appears to follow the course suggested in the answer to *Q.* 811.

WILL—CONSTRUCTION—IMPLIED CHARGE OF ANNUITY ON REALTY—TITLE.

925. *Q.* A, by will, made in 1915, appointed his son and daughter, B and C, trustees and executors thereof, and after bequeathing a clock and legacy of £50 to his son, B, the will proceeds as follows:—"I give to my wife during her life an annuity of £13, and at the decease of my said wife, I devise all those my three cottages situate [&c.] to my daughters [E and C] in equal shares as tenants in common, and I give all my real and personal estate not hereby otherwise disposed of unto my trustees upon trust to sell and convert the same and divide the net proceeds equally between my said wife and my son [B] and my said daughter [C]." Testator died in 1921, and his wife, the annuitant, in 1927. The annuity had been paid to her out of the rents of the three cottages, there being practically no residue after the funeral and testamentary expenses and the legacy of £50 were paid. B, the son (one of the trustees), has just died leaving his sister, C, sole trustee, surviving. E is a widow living in America. C would like to buy E's share, but the latter is not willing. As partition proceedings appear to have been abolished by the Property Act, it would appear that there would be no course open but to apply to the court for an order for sale, because, although C and E are now converted into trustees for sale, if one of such trustees is unwilling to sell there would be an impasse. There is also the question of the destination of the surplus rents after payment of the annuity. The cottages are not worth more than £200, and it is therefore desired to avoid the expense of recourse to the court, if possible. It will be noticed that the annuity is not in terms charged upon the cottages, and that no provision is made for the disposal of the surplus rents. Your advice would be esteemed on the following points:—

(1) Would an order of the court under the circumstances above related be necessary for sale?

(2) To whom would the surplus rents of the cottages belong, i.e., to the two devisees or the residuary legatees?

(3) If E should ultimately agree to sell her moiety to C, could a valid conveyance be taken to C, she being a trustee?

(4) In order to complete C's title, could she, as sole surviving trustee of the testator's will, assent to the devise to herself and her sister, or would another trustee of testator's will have to be appointed for that purpose?

A. The extract from the will given above is open to so many different constructions that an opinion can be little better than guesswork. A judge might find an implied gift for life to the wife— or might find it negatived by the annuity. The annuity might or might not be charged on the realty. Again, the rents during the wife's life might fall into residue and be held on trust for sale, or the fact that the cottages could not be sold by reason of the reversionary gift might create an intestacy and let in the heir. The one certainty is the reversionary gift to the daughters, but on some of the above constructions the land would have been settled land, and so require special representation to the estate of the heir or the widow. In any alternative title could be made, and possibly a purchaser might be offered his choice, or a court might force any particular title on him which it thought the right one as in *Atkinson and Horsell's Contract*, 1912, 2 Ch. 1. The only chance of avoiding recourse to the courts would be to find a purchaser willing to accept a title technically doubtful, but, with beneficial owner covenants, practically secure. C can buy E's share from her: see the point discussed *Q.* 849, p. 541, *ante*. If the funeral and testamentary expenses and debts and death duties and legacies have been paid and the widow has received the annuity, a court would probably find full implied assent to all devises and bequests in the will as in *Wise* v. *Whitburn*, 1924, 1 Ch. 460, and the question of the legal estate would depend on the construction of the will.

UNDIVIDED SHARES—DEATH OF OWNERS—SOLE BENEFICIARY A TRUSTEE FOR SALE—TITLE.

926. *Q.* A and B held certain freehold property as tenants in common in equal shares. By virtue of the Law of Property Act, 1925, they then held as joint tenants upon trust for sale. A died in April, 1926, intestate, and X is surviving administrator. B died in February, 1927, having appointed X as sole executor of her will. X is entitled absolutely and beneficially to the property. He desires to sell. Please state whether X must appoint another trustee, and what steps should he take to make a title, and, in what capacity should he sell?

A. It is not stated that X was beneficially entitled to A's estate under the A.E.A., 1925, but assuming this was so, and that he was sole beneficiary under B's will, and that both estates are cleared, and that he is therefore in a position as personal representative in each case to assent to his own beneficial interest, and does so, he becomes sole trustee and beneficiary, from whom a sensible purchaser should accept conveyance with beneficial owner covenants. See the case discussed *Q.* 244, p. 541, Vol. 70.

927. *Q.* Blackacre (freeholds) is conveyed to A, B and C as tenants in common in equal shares. By virtue of the L.P.A., 1925, they then held as joint tenants upon trust for sale. A died in April, 1926, intestate, B died in February, 1927, having appointed X sole executor, C died in June, 1927, intestate. X is entitled absolutely and beneficially to Blackacre. He is the surviving administrator of A's estate, the administrator of C's estate and sole executor of B's will. He desires to sell Blackacre. Is he obliged to appoint another trustee? If not, what documents should be executed in order that he may sell as absolute owner?

A. See answer to question above. X, as personal representative of A, B and C, must sign the requisite assents in his own favour under the A.E.A., 1925, s. 36, and then he can convey to a purchaser as beneficial owner.

UNDIVIDED SHARES SUBJECT TO MORTGAGE ON WHOLE—ASSIGNMENT OF ONE CO-OWNER'S INTEREST TO ANOTHER—PROCEDURE.

928. *Q.* On the 1st January, 1926, A, B and C were tenants in common of leaseholds subject to a mortgage (by assignment) of the entirety to a building society. A desires to sell his one-third share to B, the mortgage on the entirety remaining, in consideration of a sum of money, and of B undertaking the liability to pay A's one-third share of the mortgage money. It is assumed that by L.P.A., 1925, 1st Sched., Pt. IV, para. 1 (2), A, B and C hold the legal estate upon the statutory trusts for sale, and that by the same Act, 1st Sched., Pt. VIII, para. 1, the mortgagees hold for a term equal to that assigned by the mortgage, less ten days. It is proposed to carry out the transaction by (1) an assignment by A to B (stamped *ad valorem* on the purchase money paid by B to A, plus one-third of the mortgage money) of A's one-third share in the equitable interest in the property and the proceeds of sale thereof, B in such assignment covenanting with A to pay A's third share of the mortgage money and interest, and (2) a deed whereby A retires from the statutory trusts. It is also

proposed that B retain the assignment (no notice thereof being given to the mortgagees) and that the deed of retirement be sent to the mortgagees to keep with the title deeds.

(1) Do you agree with this statement of the legal position and the mode in which the transaction is proposed to be carried into effect ?

(2) Can you refer me to precedents of such an assignment and deed of retirement ?

A. (1) Yes, though possibly, as against the mortgagees, B and C are entitled to keep the deed of retirement (which deals with their own title only) though it is agreed that the mortgagees should be given notice of it.

(2) Perhaps Precedent No. 5, "Prideaux," vol. 3, p. 527, might be adapted for the discharge. And similarly with Nos. 11 and 12, pp. 560-561, vol. 1, as to the assignment of the equitable interest, but the indemnity on p. 563 will be against the mortgage debt, and the trust for sale will not be discharged.

POST 1925 WILL—JOINT TENANTS FOR LIFE—ASSENT—DEATH DUTIES.

929. *Q.* A by his will (home made) in 1922 willed and bequeathed his cottage, property and fields for the use and during the joint lives of his sister and two nieces, at their death, the income from this property to be held in trust as therein mentioned. Testator then appointed B and C executors. Testator died in 1926. B and C have proved the will, and are paying the income of that part of the property not occupied by deceased's sister and nieces to them in equal shares. It is assumed that the sister and two nieces being entitled as joint tenants, constitute the tenant for life under the S.L.A., 1925, s. 19 (2), and can require B and C to execute a vesting assent in their favour. The duty on the realty is being paid by instalments, and if B and C assent to the property vesting in the sister and nieces, we presume they will have to make provision for the payment of the remaining instalments. Your views will oblige.

A. General agreement is expressed with the above conclusions, subject to the usual caution given on construing a will without seeing it as a whole. The executors, B and C, can charge the property to pay death duties, see L.P.A., 1925, s. 16, and their duty as to assent is indicated in the A.E.A., 1925, s. 36 (10).

FIRST AND SECOND MORTGAGES—SALE BY FIRST MORTGAGEE TO SECOND—NOTICE OF SUBSEQUENT CHARGE—SECOND MORTGAGEE'S DUTY.

930. *Q.* A mortgages his house in 1923 to a building society and subsequently in 1923 gives B a second mortgage on the same house. Notice of B's second mortgage is served on the first mortgagees. A falls into arrears with his building society payments, and the building society notify the second mortgagee, B, that they intend selling the property. B purchases the property to protect his second mortgage, but on searching finds there is a land charge registered against A for money advanced to A by a firm of moneylenders. No notice of this charge was given to the building society. The land charge is dated after B's second mortgage. Does B get the property free from the land charge under L.P.A., 1925, s. 104 (1), or is he affected by the registration ? If the latter, it is submitted that B's second mortgage has priority to the land charge and that any subsequent purchaser from B will not be affected by reason of such registration.

A. B could, of course, have redeemed the building society. The opinion here given is that, as purchaser, he holds the land free from the registered charge under s. 104 (1), *supra*. Under s. 105, however, it would be the duty of the building society to pay any surplus of the purchase money over and above their principal interest and costs to B until his charge was satisfied, and any residue, either in the possession of the society or handed by them to B, would be held in trust for the registered chargees, notice of whose title affected the building society under the L.P.A., s. 198 (1). Subsequent purchasers from B will take free from the charge, as assigns of his interest.

FIRST MORTGAGE—REGISTRATION.

931. *Q.* Certain clients of ours lately purchased the equity of redemption in some corporation leasehold property. The mortgagees joined in the assignment for the purpose of releasing rights of consolidation and the purchasers covenanted with the vendor to indemnify him against the mortgage debt and interest, and also entered into a separate deed of covenant with the mortgagees for payment of principal and interest. The title deeds, of course, are in the possession of the mortgagees. We are wondering whether the deed of assignment requires registration. So far as we can gather from the Acts and from the books of Precedents, no registration is necessary.

A. No registration is necessary, unless, of course, the land mortgaged is registered land or in an area where registration is compulsory on such assignment. The "equity of redemption" is now, of course, the legal term subject to the mortgage term.

JOINT TENANTS—POWER TO MORTGAGE.

932. *Q.* Where freehold property in 1927 has been conveyed to a husband and wife as joint tenants, without any special clause whatever as to trustees' power of mortgaging, can the joint tenants mortgage ?

A. They hold on trust for sale under the L.P.A., 1925, s. 36 (1), and the opinion has previously been given in these columns (and is generally held) that trustees for sale have the power to mortgage, see answers to *QQ.* 170 and 242, pp. 420 and 540, Vol. 70.

SALE BY PERSONAL REPRESENTATIVES—ENDORSEMENT OF PROBATE—A.E.A., 1925, s. 36 (5).

933. *Q.* In a case where property in 1927 has been conveyed by a personal representative to a purchaser—

(*a*) Is it strictly necessary to have any endorsement on the probate ?

(*b*) Is it necessary to obtain an acknowledgment for production of the probate ?

A. (*a*) See answer to *Q.* 651, p. 100, *ante*. On the opinion there given this question is answered in the negative.

(*b*) The purchaser should have an acknowledgment, so that purchasers from him can be satisfied that there was no notice endorsed under s. 36 (5), and that therefore the conveyance took effect under s. 36 (6).

TRUST FOR OR POWER OF SALE—L.P.A., 1925, s. 205 (1) (XXIX).

934. *Q.* A, by his will, after a specific legacy, devised and bequeathed all the residue of his property unto his two executors and trustees, Y and Z, upon trust that they should either retain the same in its then actual state or should, at their discretion, from time to time, and at such times as they should think fit, sell and convert the same into money provided they should not sell any real estate held in the joint names of A and B (his wife), except with her consent. After payment of funeral expenses, debts, etc., out of the moneys to arise from such sale or forming part of his estate, Y and Z were to invest any part of his estate requiring investment in the purchase of freehold copyhold or leasehold properties or in any form of investment authorised by law, with power to sell any investment and re-invest. Y and Z were to pay the net income arising from the estate to B (A's wife) for life, and A directed that, for that provision, all the net income after his death from the property or investments, whether converted or not, should be treated as income. After the death of B the testator directed a certain freehold house and shop should be held by Y and Z, upon trust to pay the income to R for life, and after his death, Y and Z should hold the house and shop or the

proceeds, if sold upon trust for R's children, who should attain twenty-one, if no child of R should attain twenty-one, then the house and shop or the proceeds should fall into residue. After death of B, and subject to the said provision in favour of R and his children, Y and Z were to realise the estate and hold the proceeds as therein mentioned. Please advise if there is any immediate binding trust for sale within s. 205 (1) (29) of L.P.A., 1925, or whether B is a person with the power of a tenant for life under s. 20 (1) (8) of S.L.A., 1925, and entitled to a vesting assent from the trustees. Y and Z, as a matter of personal convenience, propose to allow B to collect and retain the rents of the freehold properties which mainly comprise the estate.

A. The extract from the will indicates a trust for rather than a power of sale: see cases on the S.L.A., 1882, s. 63, such as *re Wagstaff's S.E.*, 1909, 2 Ch. 201, and *re Johnson*, 1915, 1 Ch. 435, and distinguish *re Goodall*, 1909, 1 Ch. 440. See also answer to *Q.* 240, p. 540, vol. 70. On the above footing there is an immediate binding trust for sale within s. 205 (1) (xxix), *supra*, and the land is not settled land, see s. 1 (7) of the S.L.A., 1925, added by the L.P. (Am.) A., 1926. Y and Z will, therefore, hold, after assent by themselves as executors to themselves as trustees for sale, upon trust accordingly, and no vesting assent should be made to B. Y and Z will be justified in allowing B to collect and retain the net rents so far as not otherwise applicable: see the L.P.A., 1925, s. 28 (2).

Reviews.

A Treatise on the Law and Practice of Injunctions by William Williamson Kerr. Sixth edition. By J. M. Paterson. London: Sweet & Maxwell Limited. 1927. lxiv and 743 pp. £2 5s. net.

It seems hardly necessary—the facts are so well known—to draw attention to the respect with which "Kerr on Injunctions" is treated as an authority on this branch of our law, and to the frequency with which it is quoted with approval in our courts. All that need be said is that the fifth edition of the work was published in 1914, and that the large number of cases decided and statutory provisions enacted since that date have been given their proper place in the new edition. This work of revising seems to have been carried out with great care.

Comment may be made upon one or two points of interest. The range of subjects dealt with seems extremely wide. The law affecting such varied matters as waste, trespass, nuisance, trade marks, copyrights, covenants, companies, corporations, and trade unions, is tersely stated in one volume. But it appears somewhat strange to find such matters as "watching and besetting" in trade disputes and "combinations in restraint of trade," dealt with under Nuisances under the general description of "Nuisances connected with Trade Disputes," when there is a special chapter which treats of "Injunctions against Clubs, Societies etc.," and in which chapter the general law of associations and trade unions is given. The effect of the *National Sailors' and Firemen's Union, etc.* v. *Reed*, 1926, 1 Ch. 536, is not, in our opinion, correctly stated on p. 302.

The Editor is to be congratulated on his success in maintaining the high standard reached in previous editions of "Kerr."

Books Received.

Wolstenholme and Cherry's Conveyancing Statutes, etc. In Two Volumes. Vol. II: The Settled Land Act, with Notes; The Trustee Acts, 1888, 1889, and 1925, with Notes; The Administration of Estates Act, 1925, with the parts of the Supreme Court of Judicature (Consolidation) Act, 1925, taken therefrom, and Notes; The Law of Property (Amendment) Act, 1926, with Notes; The Legitimacy Act, 1926, with Notes; The Married Women's Property Acts, 1882 to 1908, with Notes; Statutory Rules, Forms, Orders, etc., with Notes. Eleventh Edition. Sir Benjamin Lennard Cherry, LL.B., of Lincoln's Inn, one of the Conveyancing Counsel to the Court, John Chadwick, M.A., LL.B., of the Inner Temple, and David Hughes Parry, M.A., LL.M., of the Inner Temple, Barristers-at-Law. 1927. pp. civ and 1167. Stevens & Sons, Ltd. The two Vols., £4 net.

House of Lords.

Welsh Navigation Steam Coal Co. *v.* **Evans.** 14th July.

Workmen's Compensation — Partial Dependancy — Ordinary Necessaries of Life—Savings of Dependant —Workmen's Compensation Act, 1925, s. 4 (2).

The parents of a workman claimed compensation for his death as being partial dependants. The son earned £1 13*s.* 1*d. weekly, all of which he handed to his mother, who kept him and gave him* 5*s. a week pocket money. There was another brother who earned* £3 17*s.* 9*d. The father earned* £4 4*s.* 9*d., and had saved* £500.

Held, that the parents were in no way dependent on the contributions of the deceased son.

The question raised by this appeal was whether the county court judge was entitled to find on the evidence that the respondents were not partially dependent on the earnings of their son, thus disentitling them to compensation, and whether the judge misdirected himself as to the effect of s. 22 of the Workmen's Compensation Act, 1923 (now re-enacted by s. 4 (2) of the Act of 1925). The facts as set out by the county court judge in the case stated by him were as follows: The deceased was a young coalminer twenty years of age, whose weekly average earnings were £1 13s. 1d. He lived in the family with his father and mother and another brother. The father's weekly earnings was £4 4s. 9d., and that of the elder brother £3 17s. 9d. The deceased handed all his wages to his mother, who kept him and gave him 5s. pocket money. They were a thrifty family and the father had saved £500. In these circumstances the county court judge held that there was no dependency and stated in a note to his judgment that the parents had saved all the money obtained from each son except what was necessary to keep the son in food, clothes and pocket money, and that the parents could not be said to be in any way dependent for the ordinary necessaries of life. The Court of Appeal set aside the award, and remitted the case for re-hearing, particularly referring to the opinions given by themselves in *Kennedy* v. *Horden Collieries*, 1925, 2 K.B. 438, and *Peart* v. *Bolckow Vaughan & Co.*, 1925, 1 K.B. 299.

Lord Dunedin in delivering judgment after criticising certain *dicta* in those two cases, which so far as the results were concerned he thought were rightly decided, referred to s. 22 of the Act of 1923, and said that he thought the matter could not have been more clearly expressed. They were to find what family budget would be suitable to the class and position. He agreed that the actual expenditure was a *prima facie* guide, and that there was no meticulous distinction between absolute necessaries and articles of comfort or luxury, but still they were to take the necessaries of life. The expression was a common and well-understood expression, and indicated food, clothing and shelter, and the necessary concomitants thereto. But to extend it to such a thing as savings or what was the same thing, insurance, was in his opinion to do utter violence to the expression, and though the Master of the Rolls said that he did not wish to discourage thrift, he was afraid he must reply that it was not allowable to encourage thrift by wresting

a word used in a statute from its ordinary and natural meaning. If the true view was that any balance which came after a man's keep was "available" for necessaries, and that that was enough, why should there be any question of necessaries at all? All money that anyone had was available for necessaries, just as it was available for anything else. He was therefore of opinion that the judgment of the Court of Appeal was wrong. He moved that the appeal be allowed and the decision of the county court judge restored, the respondents to pay the costs in that House and in the Courts below.

The other noble and learned lords concurred.

COUNSEL: *E. W. Cave*, K.C., and *Victor Evans*; *Montgomery*, K.C., and *A. T. James*.

SOLICITORS: *Bell, Brodrick & Gray*, for *Kensholes & Prosser*, Aberdare; *Smith, Rundell, Dods & Bockett*, for *Morgan, Bruce and Nicholas*, Pontypridd.

[Reported by S. E. WILLIAMS, Esq., Barrister-at-Law.]

High Court—Chancery Division.

In re Lord Alington and the London County Council's Contract.

Russell, J., 19th, 20th, 24th May, and 2nd June.

SETTLED LAND—SUBSISTING CHARGE AND JOINTURE—SETTLEMENT—DEEMED TO BE SUBSISTING—TRUSTEES—CONTRACT TO SELL SUBJECT TO CHARGE—SETTLED LAND ACT, 1925, 15 Geo. 5, c. 18, ss. 3, 31, 33.

By virtue of the operation of the Settled Land Act, 1925, *ss.* 3, 31 *and* 33, *a purchaser can get a good title discharged from all claims in respect of a family charge secured by a term under a settlement before the act, and a jointure rent-charge created after the act on payment of the purchase money to trustees of the compound settlements under a contract entered into after a vesting deed had been created, in which it was declared that the property vested in the vendor in fee simple, and that he stood possessed thereof upon the trusts and subject to the powers and provisions subject to which under the compound settlement the same ought to be held.*

In re Earl of Carnarvon's Highclere Settled Estates, 1927, 1 Ch. 138, *considered.*

Vendor and purchaser summons.

This was a summons by Lord Alington, the vendor, asking the court for an order that the objections of the purchaser, the London County Council, to the title to the property sold had been sufficiently answered, and that a good title had been shown. The facts were as follows: By a disentailing deed of 1924 the property was assured to the use of the vendor in fee simple subject to all charges and incumbrances affecting the same, and by a deed of 1925 a yearly rent-charge of £4,000 was charged on the property. On 1st January, 1926, when the Settled Land Act, 1925, came into operation, the property was vested in the vendor in fee, but subject to two family charges which were interests vested in possession, namely, the sum of £8,750 secured by a term of 200 years limited by a settlement of 1880, and a jointure rent-charge of £4,000, which was originally charged by a settlement of 1883 under the power in the settlement of 1880, and afterwards transferred to other lands exclusively and ultimately re-imposed upon the property by a deed of 1925. Before the disentailing deed of 1924 the property had been subject to a settlement, namely, the compound settlement constituted by the documents mentioned in an order of the Chancery Division dated 1st March, 1920, or some of them, under which the trustees of the 1880 settlement were appointed trustees, for the purposes of the Settled Land Acts, 1882-1890, of the compound settlement constituted by the settlements of 1880 and 1883, a deed of 1871, a deed of 2nd February, 1892, a settlement of 9th February, 1892, a disentailing deed of 1914, or any two or more of them. In 1926 by a vesting deed it was declared that the property was vested in the vendor in fee simple, and that he stood possessed thereof upon the trusts and subject to the powers and provisions subject to which under the compound settlement there described or otherwise the same ought to be held from time to time, and that the trustees of the 1880 settlement were the trustees of such compound settlement for the purposes of the Settled Land Act, 1925. The question which arose was whether if the purchase price of the property was paid to the executing trustees the purchaser got a good title discharged from all claims in respect of the £8,750 and the £4,000 jointure rent-charge.

RUSSELL, J., after stating the facts, said: The case of *In re Earl of Carnarvon's Highclere Settled Estates*, 1927, 1 Ch. 138, decided that under the old law immediately before the Settled Land Act, 1925, came into operation, the property was not settled land, but it had been subject to the compound settlement constituted by the documents mentioned in the order of the Chancery Division or some of them. The £8,750 is a still subsisting charge under that settlement and therefore by s. 3 of the Settled Land Act, 1925, that settlement is deemed to be a subsisting settlement for the purposes of the Settled Land Act, 1925. Under ss. 31-33 the trustees of that settlement are trustees of it for the purposes of the Settled Land Act, 1925, and a receipt by them for the purchase money will free the land sold from the £8,750. The £4,000 jointure was created by the deed of 1925, but s. 31 made the trustees of the compound settlement trustees of any settlement constituted by the compound settlement, and any instrument subsequent in date or operation, and that includes the disentailing deed of 1924, and the deed of 1925. The property was subject to a compound settlement constituted by the settlement of 1880, the disentailing deeds of 1914 and 1924, and the deed of 1925. On the receipt by the trustees of the purchase money the property in the hands of the purchaser will be free from the £8,750 and the £4,000 jointure rent-charge. There will be an order that a good title to the property has been shown.

COUNSEL: *Topham*, K.C., and *J. V. Nesbitt*; *Stamp*.

SOLICITORS: *Nicholl, Manisty & Co.*; *T. Bullivant*.

[Reported by L. M. MAY, Esq., Barrister-at-Law.]

Probate, Divorce and Admiralty Division.

Richardson *v.* Richardson and National Bank of India Limited.

Hill, J. 21st March and 12th May.

DIVORCE—WIFE'S COSTS—GARNISHEE ORDER DIRECTED TO RESPONDENT BANK—RESPONDENT HUSBAND'S ACCOUNT AT COLONIAL BRANCH—Ord. XLV, r. 1—REGISTRATION UNDER COLONIAL ORDINANCES.

Moneys held by a bank to the credit of a judgment debtor at a "foreign" branch cannot be made the subject of a garnishee order.

This was an appeal from the registrar to the judge in chambers adjourned into court. The appellant wife was granted a decree *nisi* of dissolution of her marriage on the 15th November, 1925, and subsequently became a judgment creditor of her husband in respect of her costs amounting to £182 10s., and obtained a garnishee order directed to the National Bank of India Limited, a company registered in England with its head office in London, which held funds to the credit of the judgment debtor. In the garnishee proceedings before the registrar the appellant asked for an order directing the garnishees to pay out of the judgment debtor's account at the bank's branches at Mombasa or Dar-es-Salaam, but the registrar ordered that the garnishees should pay to the judgment creditor only so much of the judgment debtor's account as was held in England, which amounted to £12 2s.

HILL, J., in the course of a considered judgment, said the judgment debtor was formerly employed at Mombasa in Kenya Colony, and in January last at Dar-es-Salaam, in

Tanganyika, a mandated territory. The affidavit in support of the garnishee proceedings deposed to a belief that the judgment debtor had an account with the bank at Dar-es-Salaam or at Mombasa. It was shown that there were transfers from his account at Mombasa to his account in London, where he had a credit balance of £12 2s. The bank said that the head office did not know whether the judgment debtor had an account in January, 1927, at either of the African branches, but that if he had the bank could not be made the subject of a garnishee order here because payment under the order here would not be a good discharge in the courts of Kenya Colony or Tanganyika. The bank also said that any account at the African branches would be kept in a currency different from English currency. The question was obviously of great and general importance to banks with foreign branches, and he had come to the conclusion that the bank was in the right. For the purposes of the judgment he assumed that there were moneys to the credit of the judgment debtor at one of the African branches. Certain contractual obligations between a bank and its customer, in the absence of special agreement, were well ascertained. They included those stated by Atkin, L.J., in *Joachimson* v. *Swiss Bank Corporation*, 1921, 3 K.B., at p. 127, two of which were that the promise of the bank to repay was to repay at the branch of the bank where the account was kept; and that the bank was not liable to pay until payment was demanded at the branch at which the account was kept. The court was there dealing with a current account, but the same principle underlay the judgment of the Judicial Committee of the Privy Council in *Rex* v. *Lovitt and Others*, 1912, A.C. 212, relating to a deposit account at the New Brunswick branch of the Bank of British North America; but if a demand were made at the branch where the account was kept and payment were refused the position was altered. The bank was liable to be sued where it could be served: *Leader* v. *Disconto-Gesellschaft*, 31 T.L.R. 83, referred to in *George Clare & Co.* v. *Dresdner Bank Limited*, 31 T.L.R. 278. On the foreign currency question, *vide Di Ferdinando* v. *Simon, Smits & Co. Limited*, 1920, 3 K.B. 409, and *The Lloyd Royal Belge* v. *Dreyfus*, 27 Ld. L. 288. The Court of Appeal had made it clear that the cause of action upon refusal to pay in a foreign currency was damage and not debt. The above considerations led to the following conclusions in the present case as between the bank and the debtor: (1) Primarily the bank was liable to pay only at the African branch and upon a demand made there; (2) upon demand at and refusal by the African branch the bank could be sued here, but the breach having been a refusal to pay in a foreign currency, the cause of action here could only be for damages, and the bank could not be sued here for money lent. On the question whether Ord. XLV, r. 1, applied, the bank was no doubt indebted to the judgment debtor, and the bank was within the jurisdiction. The words in the order: " . . . any other person is indebted to such debtor and is within the jurisdiction" meant—is indebted within the jurisdiction and is within the jurisdiction. The debt must be properly recoverable within the jurisdiction. In principle, attachment of debts was a form of execution, and the general power of execution extended only to property within the jurisdiction of the court which ordered it. A debt was not property within the jurisdiction if it could not be recovered here: *Martin* v. *Nadel*, 1906, 2 K.B. 26, as explained by *Swiss Bank Corporation* v. *Bochmische Industrial Bank*, 1923, 1 K.B. 673. In *Joachimson* v. *Swiss Bank Corporation* the Court of Appeal said that the service of a garnishee order *nisi* was a sufficient demand, but the court had not to consider whether the service of an order *nisi* on the London bank would be a sufficient demand for payment by a branch abroad. When the branch at which the account was kept was abroad the order *nisi* could not be served there. In the result he was of opinion that moneys held by the bank to the credit of the judgment debtor at either of the African branches could not be made the subject of a garnishee order, for they were not a debt recoverable within the jurisdiction. If the creditor were right, then, upon service of the order *nisi* the bank would become custodian for the court of the whole of the funds to the credit of the judgment debtor at all its branches and could not, except at its peril, hand over any of those funds in any part of the world: *Rogers* v. *Whiteley*, 1892, A.C. 118, and the burden would be placed on the bank to communicate with all its branches throughout the world. If he were wrong in the view he had taken, the question would still remain whether the order *nisi* ought to be made absolute. It ought not to be so made if it would not be a good discharge in the courts of Kenya Colony and Tanganyika. He had evidence that it would not be a good discharge in those courts, but if the order were registered under the Colonial Ordinances payment would be a good discharge by the bank. In that state of the law abroad it would be inequitable to make the order here. The appeal would be dismissed with costs.

COUNSEL: For the appellant, *Robert Fortune;* for the respondent bank, *Sir Robert Aske.*

SOLICITORS: *Gordon Dadds & Co.; Sanderson, Lee & Co.*

[Reported by J. F. COMPTON MILLER, Esq., Barrister-at-Law.

Obituary.

MR. G. P. MASON.

Mr. George Percival Mason, solicitor, senior partner of the firm of Messrs. Mason, Grierson & Martin, of 34, Castle Street, Liverpool, passed away at Hoylake, on the 31st *ulto*, at the age of sixty-one. He was the son of Mr. George Mason (who also practised in that city for many years) and was articled to the late Mr. Enoch Harvey, of Messrs. Harvey, Allsop & Stevens (now Allsop, Stevens, Crooks & Co.) of 14 Castle Street, Liverpool, and was admitted in 1891. He was a Notary Public and a member of The Law Society.

Societies.

The Law Society.

ANNUAL PROVINCIAL MEETING.

At the forty-fourth annual provincial meeting of The Law Society, which is to be held at Sheffield from Monday, 26th September to Thursday, 29th September, Tuesday, the 27th, and Wednesday, the 28th, will be devoted to the reading and discussion of papers on legal subjects written by members of the Society. Mr. C. Stanley Coombe (hon. secretary, Sheffield District Incorporated Law Society) has issued a short programme of other events as follows:—

On Monday, the 26th, a reception will be held by the Lord Mayor of Sheffield at the Town Hall, at 8 p.m. On Tuesday, the 27th, a banquet (tickets £1 10s.) will take place at the Royal Victoria Hotel. On Wednesday, the 28th, local visits will be paid to (1) the works of Messrs. Vickers, Ltd., (2) to those of Messrs. Walker & Hall, Ltd., and (3) to the New Automatic Telephone Exchange. At 4.15 will be held a Degree Congregation at the University of Sheffield, when (as already announced in our columns) honorary degrees will be conferred on the Lord Chief Justice and the President of The Law Society (Mr. Cecil Allen Coward, London), and others. In the evening, at 8, the Lyceum Theatre will be placed at the disposal of the visitors, when "Aloma," a play of the Southern Seas, will be performed. On Thursday, the 29th, there will be three alternative whole day excursions as follows: (1) "The Sheffield Water System" (Derwent Valley, Langsett, etc.); (2) "The Dukeries" (Clumber, Welbeck, etc.); and (3) "Beautiful Derbyshire" (in co-operation with the Buxton and High Peak Law Society). The proceedings will terminate with a smoking concert at the Cutlers' Hall at 8 in the evening.

Legal Notes and News.

Honours and Appointments.

Sir KENNETH JAMES BEATTY, Kt. (Chief Justice, Bermuda) has been appointed Chief Justice of the Supreme Court of the Bahama Islands.

Mr. HERBERT ALFRED EDWARD HEY, solicitor, of the firm of Holmes, Beldam & Co., Arundel and Littlehampton, has been appointed Town Clerk of Arundel, Clerk to the Justices for the Division of Arundel, Clerk to the Commissioners of Taxes for the Division of Arundel Upper, Clerk to the Commissioners of Sewers for the Rape of Arundel and Steward of the Duke of Norfolk's Sussex Manors in succession to the late Mr. Arthur Holmes of the same firm. Mr. Hey was admitted in 1905.

Mr. LAWRENCE GEORGE WATSON, solicitor, Deputy Town Clerk and Deputy Clerk of the Peace, Wolverhampton, has been appointed Deputy Town Clerk of Blackpool. Mr. Watson was admitted in 1921.

Mr. CHARLES NIGHTINGALE ROBERTS, solicitor, Blackpool, has been appointed Assistant Solicitor in the office of Mr. D. L. Harbottle, Town Clerk of Blackpool. Mr. Roberts was admitted in 1923.

Mr. Henry E. Davenport and Mr. Frederick D. Green, the Sheriffs-elect of the City of London, have appointed as their Under-Sheriffs Mr. CECIL F. J. JENNINGS, solicitor, of St. Swithin's-lane, and Mr. H. W. CAPPER, solicitor, of the Cripplegate Institute. The new Sheriffs will be sworn in at Guildhall on Wednesday, 28th September, and will hold their inauguration breakfast at Drapers' Hall on the same day. Their first duty will be to conduct the election of Lord Mayor on the following day.

Professional Announcements.

In consequence of the death of Mr. A. J. Odell, solicitor, the surviving partner in the firm of Messrs. Rossiter & Odell, of 37 and 39, Essex Street, Strand, W.C., the practice has been amalgamated with that of Messrs. Merrimans, of 3, Mitre Court, Temple, E.C.4, and will be carried on from their offices.

Mr. NOEL D. PEARD, son of Mr. Henry Terrell Peard, solicitor, Union Bank Chambers, Croydon, will shortly join his father in partnership there. Mr. Noel Peard recently passed the Final Examination of The Law Society with First Class Honours, being awarded the Clifford's Inn Prize; he has also taken the LL.B. degree with Second Class Honours and was articled to Mr. W. N. Rowland, solicitor, of that town. The name of the firm (Peard & Son) will remain unchanged.

Resignations.

Mr. J. ROSE, solicitor, Clerk to the Oxfordshire County Council, has tendered his resignation, which will take effect at the end of the financial year.

Mr. JOHN CREERY, Clerk to the Ashford (Kent) Urban District Council, is resigning that appointment as from the 31st March next.

Wills and Bequests.

Mr. William Michael Spence, of New Square, Lincoln's Inn, W.C., and Park Drive, Hendon, N.W., a Bencher of Lincoln's Inn, died on 27th July, leaving estate of the gross value of £23,632.

THE UNMARRIED MOTHER AND THE LAW.

The ninth annual report of the National Council for the Unmarried Mother and her Child states that of five principles which obtained acceptance in the council's first Bastardy Bill, 1920, all but one have now been placed on the Statute-book. These are legitimation by subsequent marriage; an increase in the maximum payment under an affiliation order; the transfer of an affiliation order obtained by a board of guardians without a rehearing of the case; and power for a summons to be issued by another magistrate in case of the death or removal of the justice to whom the application has previously been made.

In addition to these reforms, the council was instrumental in obtaining the inclusion in the Legitimacy Act of a clause under which an illegitimate child is entitled to share in the property of his mother if she dies intestate and without legitimate children.

Referring to the rejection of the Bastardy Bill re-introduced in the House of Lords by Lord Astor, the council state that the Bill has since been re-drafted and amended on certain points, although the general main principles are adhered to.

BIRTHS, DEATHS, AND MARRIAGES.

The Registrar-General's quarterly return shows that the births registered in the second quarter of 1927 numbered 171,080 and were 3,954 more than in the preceding quarter, and 10,375 below the number recorded in the corresponding quarter of 1926. Of these 171,080 births, 87,207 were males and 83,873 females, giving a proportion of 1,040 males to 1,000 females; the average proportion in the ten preceding second quarters was 1,046. The births registered in the quarter corresponded to an annual rate of 17·6 per 1,000 of the estimated mid-year population for 1926. This rate was 1·0 per 1,000 below that recorded in the corresponding quarter of 1926.

The deaths registered numbered 107,608, and were 61,162 fewer than in the preceding quarter and 6,210 fewer than in the corresponding quarter of 1926. They included 55,741 males and 51,867 females, corresponding to an annual rate of 11·0 per 1,000 of the estimated population, and a proportion of 1,075 males to 1,000 females. The general death-rate was 0·7 per 1,000 below that recorded during the corresponding quarter of last year—the lowest recorded in any second quarter. Measured by the proportion of deaths of infants under one year of age to births registered, the infant mortality was equal to 59 per thousand, this being three per thousand below the rate for the second quarter of 1926 and sixteen per thousand below the average of the ten preceding second quarters. Influenza was stated to be either a primary or contributory cause of deaths in 1,795 cases, or 1·67 per cent. of the total deaths.

The number of persons married in the first quarter—as distinct from the second quarter, the period dealt with in the other sections of the report—was 95,710, a decrease of 46,514 over the number in the preceding quarter, and 3,374 more than that in the corresponding quarter of 1926. This number corresponded to an annual rate of 9.9 per 1,000 of the estimated mid-year population, and was 0·3 more than that recorded in the corresponding quarter of last year. The natural increase of population in England and Wales for the second quarter by excess of births over deaths was 63,472, as against 72,850, 73,646, and 67,637 in the second quarter of 1924, 1925, and 1926.

Court Papers: Vacation Notice.

High Court of Justice.

LONG VACATION, 1927.—NOTICE (No. 2.)

During the remainder of the Vacation, all applications "which may require to be immediately or promptly heard," are to be made to the Hon. Mr. Justice MACKINNON.

COURT BUSINESS.—The Hon. Mr. Justice MACKINNON will sit in the Lord Chief Justice's Court, Royal Courts of Justice, at 10.30 a.m., on Wednesday, in each week, for the purpose of hearing such applications of the above nature, as, according to the practice in the Chancery Division, are usually heard in Court.

No case will be placed in the Judge's Paper unless leave has been previously obtained or a Certificate of Counsel that the case requires to be immediately or promptly heard, and stating concisely the reasons, is left with the papers.

The necessary papers, relating to every application made to the Vacation Judges (see notice below as to Judges' Papers), are to be left with the Cause Clerk in attendance, Chancery Registrars' Office, Room 136, Royal Courts of Justice, before 1 o'clock two days previous to the day on which the application is intended to be made.

URGENT MATTERS WHEN THE JUDGE IS NOT PRESENT IN COURT OR CHAMBERS.—Application may be made *in any case of urgency*, to the Judge personally (if necessary), or by post or rail, prepaid, accompanied by the brief of Counsel, office copies of the affidavits in support of the application, and also by a Minute, on a separate sheet of paper, signed by Counsel, of the order he may consider the applicant entitled to, and also an envelope, sufficiently stamped, capable of receiving the papers, addressed as follows: "Chancery Official Letter: To the Registrar in Vacation, Chancery Registrars' Office, Royal Courts of Justice, London, W.C.2."

On applications for injunctions, in addition to the above a copy of the writ must also be sent.

The Papers sent to the Judge will be returned to the Registrar.

The address of the Vacation Judge can be obtained on application at Room 136, Royal Courts of Justice.

CHANCERY CHAMBER BUSINESS.—The Chambers of Mr. Justice ASTBURY and Mr. Justice CLAUSON will be open for Vacation business on Tuesday, Wednesday, Thursday and Friday only in each week, from 10 to 2 o'clock.

KING'S BENCH CHAMBER BUSINESS.—The Hon. Mr. Justice MACKINNON will sit for the disposal of King's Bench Business in Judge's Chambers at 10.30 a.m. on Tuesday in every week.

PROBATE AND DIVORCE.—Summonses will be heard by the Registrar, at the Principal Probate Registry, Somerset House, every day during the Vacation at 11.30 (Saturdays excepted).

Motions will be heard by the Registrar on Wednesdays, the 7th and 21st September, at the Principal Probate Registry at 12.15.

Decrees will be made absolute on Wednesdays, the 14th and 28th September.

All Papers for making Decrees absolute are to be left at the Contentious Department, Somerset House, on the preceding Thursday, or before 2 o'clock on the preceding Friday. Papers for Motions may be lodged at any time before 2 o'clock on the preceding Friday.

The Offices of the Probate and Divorce Registries will be opened at 10 a.m. and closed at 4 p.m., except on Saturdays, when the Offices will be opened at 10 a.m. and closed at 1 p.m.

JUDGE'S PAPERS FOR USE IN COURT.—Chancery Division.—The following Papers for the Vacation Judge are required to be left with the Cause Clerk in attendance at the Chancery Registrars' Office, Room 136, Royal Courts of Justice, on or before 1 o'clock, two days previous to the day on which the application to the Judge is intended to be made:—

(1) Counsel's certificate of urgency or note of special leave granted by the Judge.

(2) Two copies of writ and two copies of pleadings (if any).

(3) Two copies of notice of motion, one bearing a 10s. impressed stamp.

(4) Office copy affidavits in support, and also affidavits in answer (if any).

N.B.—Solicitors are requested when the application has been disposed of, to apply at once to the Judge's Clerk in Court for the return of their papers.

VACATION REGISTRAR.—Mr. RITCHIE (Room 188).

Chancery Registrars' Office,
Royal Courts of Justice.
September, 1927.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate 4½%. Next London Stock Exchange Settlement Thursday, 8th September, 1927.

	Middle Price 31st Aug.	Interest Yield.			Yield with Redemption.		
English Government Securities.		£	s.	d.	£	s.	d.
Consols 4% 1957 or after	84 1/16	4	14	6	—		
Consols 2½%	54 1/16	4	11	6	—		
War Loan 5% 1929-47	101 7/8	4	18	0	4	19	0
War Loan 4½% 1925-45	96 7/8	4	13	6	4	17	0
War Loan 4% (Tax free) 1929-42	101 3/4	3	18	6	3	19	6
Funding 4% Loan 1960-90	86 3/8	4	12	6	4	14	0
Victory 4% Bonds (available for Estate Duty at par) Average life 35 years	93	4	6	0	4	8	6
Conversion 4½% Loan 1940-44	97 5/16	4	12	0	4	15	6
Conversion 3½% Loan 1961	75xd	4	13	6	—		
Local Loans 3% Stock 1921 or after	63 3/8	4	14	0	—		
Bank Stock	256	4	14	0	—		
India 4½% 1950-55	93 1/2	4	16	6	4	19	0
India 3½%	70 1/2	4	19	6	—		
India 3%	60 1/2	4	19	6	—		
Sudan 4½% 1939-73	92 3/4	4	17	0	4	18	0
Sudan 4% 1974	85	4	14	0	4	18	0
Transvaal Government 3% Guaranteed 1925-53 (Estimated life 19 years)	80 3/4	3	14	0	4	12	6
Colonial Securities.							
Canada 3% 1938	84 1/2	3	11	6	4	18	0
Cape of Good Hope 4% 1916-36	94	4	5	6	5	0	0
Cape of Good Hope 3½% 1929-49	80 1/2	4	7	0	5	0	6
Commonwealth of Australia 5% 1945-75	98 1/2	5	2	0	5	2	6
Gold Coast 4½% 1956	93 1/4	4	16	0	4	18	0
Jamaica 4½% 1941-71	92 1/2	4	17	6	4	19	0
Natal 4% 1937	93 1/2	4	5	6	4	19	6
New South Wales 4½% 1935-45	90 3/8	5	0	0	5	8	0
New South Wales 5% 1945-65	98 1/2	5	2	0	5	4	0
New Zealand 4½% 1945	95 1/2	4	14	6	4	18	0
New Zealand 5% 1946	102 1/2	4	18	0	4	18	6
Queensland 5% 1940-60	99 1/2	5	1	0	5	3	6
South Africa 5% 1945-75	102 1/2	4	17	6	4	18	6
S. Australia 5% 1945-75	98 1/2	5	1	6	5	3	0
Tasmania 5% 1945-75	99 1/2	5	0	0	5	1	0
Victoria 5% 1945-75	99 1/4	5	0	0	5	1	0
W. Australia 5% 1945-75	99	5	1	0	5	2	6
Corporation Stocks.							
Birmingham 3% on or after 1947 or at option of Corpn.	63 1/4	4	15	0	—		
Birmingham 5% 1946-56	104	4	16	6	4	17	0
Cardiff 5% 1945-65	100 1/2	4	19	0	4	19	0
Croydon 3% 1940-60	69 1/2	4	7	6	5	0	0
Hull 3½% 1925-55	77 3/4	4	10	0	5	0	0
Liverpool 3½% on or after 1942 at option of Corpn.	73	4	16	0	—		
Ldn. Cty. 2½% Con. Stk. after 1920 at option of Corpn.	52 1/4	4	15	0	—		
Ldn. Cty. 3% Con. Stk. after 1920 at option of Corpn.	62 3/4	4	16	0	—		
Manchester 3% on or after 1941	63 1/4	4	15	0	—		
Metropolitan Water Board 3% 'A' 1963-2003	63	4	15	6	4	17	6
Metropolitan Water Board 3% 'B' 1934-2003	63 3/4	4	14	0	4	16	0
Middlesex C. C. 3½% 1927-47	82	4	5	6	4	17	0
Newcastle 3½% irredeemable	73	4	16	0	—		
Nottingham 3% irredeemable	63	4	15	6	—		
Stockton 5% 1946-66	101 1/2	4	19	0	4	19	6
Wolverhampton 5% 1946-56	102 1/4	4	17	6	4	18	0
English Railway Prior Charges.							
Gt. Western Rly. 4% Debenture	80 3/4	4	19	0	—		
Gt. Western Rly. 5% Rent Charge	98 1/2	5	1	6	—		
Gt. Western Rly. 5% Preference	92 1/4	5	8	0	—		
L. North Eastern Rly. 4% Debenture	74 1/2	5	7	6	—		
L. North Eastern Rly. 4% Guaranteed	68 1/4	5	16	6	—		
L. North Eastern Rly. 4% 1st Preference	62	6	8	6	—		
L. Mid. & Scot. Rly. 4% Debenture	79 1/4	5	0	6	—		
L. Mid. & Scot. Rly. 4% Guaranteed	76	5	5	6	—		
L. Mid. & Scot. Rly. 4% Preference	71 1/4	5	12	0	—		
Southern Railway 4% Debenture	78 1/2	5	2	0	—		
Southern Railway 5% Guaranteed	95	5	5	0	—		
Southern Railway 5% Preference	87 1/2	5	14	0	—		